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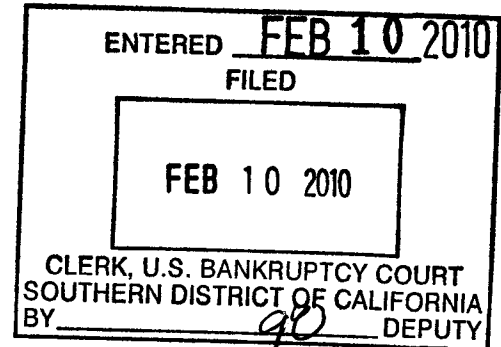
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**NOT FOR PUBLICATION**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re

SIMPLON BALLPARK, LLC.,

Debtor.

Bankruptcy No. 08-01803-JM11

ORDER TO THOMAS C. NELSON TO  
RESPOND AND SHOW CAUSE WHY HE  
SHOULD NOT BE SANCTIONED AND/OR  
REFERRED TO THE STANDING  
COMMITTEE ON DISCIPLINE

The Court issued an order to Thomas C. Nelson ("Mr. Nelson") on September 30, 2009, ("September 30 Order")<sup>1</sup> which required Mr. Nelson to file a supplemental declaration to provide the full disclosure required of counsel for a debtor-in-possession in this case. To date, Mr. Nelson has not complied with the September 30 Order.

This Order is issued to provide Mr. Nelson one more opportunity to respond to the Court's concerns, before the Court considers whether to impose sanctions against Mr. Nelson, and what type of sanctions may be appropriate. This Order is issued pursuant to the Court's inherent

<sup>1</sup> A copy of the September 30 Order is attached hereto as Exhibit A.

1 authority under 11 U.S.C. § 105<sup>2</sup>, as well as authority specifically  
2 granted under CivLR<sup>3</sup> 83.1 and 83.5, Code §§ 327, 328 and 329, and B.R.  
3 2014, 2016 and 2017.

4 In addition to his failure to respond to the September 30 Order,  
5 there have been problems with other recent cases<sup>4</sup> in which Mr. Nelson  
6 appeared on behalf of Chapter 11 debtors before the undersigned. In  
7 each of these cases, Mr. Nelson appeared as counsel for the Debtor-in-  
8 Possession, but failed to obtain an order approving his employment as  
9 required by B.R. 2014. The debtors in each of these cases failed to  
10 file monthly operating reports as required by B.R. 2015, failed to pay  
11 quarterly fees owing to the U.S. Trustee, and had instances of tardy  
12 schedules or failure to appear for the 341(a) meeting of creditors.  
13 Each case was dismissed or converted to Chapter 7 for cause. Mr.  
14 Nelson did not file a fee application in any of the cases.

15 The Court has the authority to impose a broad range of sanctions  
16 for attorney misconduct. See, CivLR 83.1 and 83.5, In re Brooks-  
17 Hamilton, 400 B.R. 238(9th Cir. BAP 2009); Hale v. U.S. Trustee, 509  
18 F.3d 1139 (9<sup>th</sup> Cir. 2007); In re Lehtinen, 332 B.R. 404 (9<sup>th</sup> Cir. BAP  
19 2005); and In re Crayton 192 B.R. 970(9th Cir. BAP 1996). After the  
20 deadline to file a response expires, the Court will set any hearing  
21 which is necessary to consider an appropriate sanction, which may  
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23 <sup>2</sup> Unless otherwise indicated, all references to "chapter" and section" are to the Bankruptcy  
24 Code, 11 U.S.C. §§ 101 - 1532, and all references to "B.R." are to the Federal Rules of Bankruptcy  
Procedure (Fed.R.Bankr.P.) 1001 - 9037.

25 <sup>3</sup> Local Rules of Practice for the United State District Court for the Southern District of  
26 California.

27 <sup>4</sup> These cases include: In re Jules Elliot Briskin, Case No. 08-10018-JM11; In re Ahmad  
28 Hajiyousfi and Shalah Salah-Isfanhani, Case No. 09-04303-JM11; In re Prize Properties, LLC, 09-  
09817-JM7; In re Marshall Shields, Case No. 09-14224-JM11; and In re Marshall Shields, Case No. 09-  
17085-JM7.

1 include a finding of contempt, imposition of monetary sanctions, an  
2 order requiring disgorgement of fees received by Mr. Nelson, or  
3 referral of the matter to the Standing Committee on Discipline or  
4 other disciplinary body.

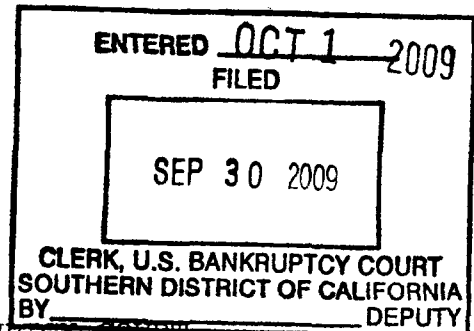
5 Therefore, IT IS ORDERED THAT:

6 On or before February 25, 2010, Thomas C. Nelson shall file a  
7 Response to the September 30 Order with a supplemental declaration.  
8 In addition to the information required by the September 30 Order, Mr.  
9 Nelson should provide any other information or mitigating  
10 circumstances which he would like the Court to consider in deciding  
11 an appropriate sanction for his misconduct in this case. A copy of  
12 the supplemental declaration shall be served on the U.S. Trustee. The  
13 Court shall continue to retain jurisdiction over this matter pending  
14 satisfactory disclosure by Mr. Nelson and resolution of any issues  
15 related thereto.

16 Dated: FEB 10 2010

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19 JAMES W. MEYERS, Judge  
20 United States Bankruptcy Court  
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2 **NOT FOR PUBLICATION**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re

SIMPLON BALLPARK, LLC.,

Debtor.

Bankruptcy No. 08-01803-JM11

ORDER TO THOMAS C. NELSON TO  
SUBMIT A SUPPLEMENTAL  
DECLARATION UNDER § 329 AND RULE  
2017

The court reviewed the Declaration of Thomas C. Nelson Regarding Compensation Received From the Debtor, and the history of this case. After this review, the Court orders Mr. Nelson to file a supplemental declaration to provide the full disclosure required of counsel for a debtor in possession. This Order is issued pursuant to the Court's inherent authority under 11 U.S.C. § 105<sup>1</sup>, as well as authority specifically granted under §§ 327, 328 and 329 and Rules 2014, 2016 and 2017.

This case was initiated with a "bare-bones" petition submitted

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<sup>1</sup> Unless otherwise indicated, all references to "chapter" and section" are to the Bankruptcy Code, 11 U.S.C. §§ 101 - 1532, and all references to "rule" are to the Federal Rules of Bankruptcy Procedure (Fed.R.Bankr.P.) 1001 - 9037.

1 by Fresno attorney Hanno T. Powell on March 4, 2008. On March 13,  
2 2008, a substitution of Attorney Thomas C. Nelson was filed. There  
3 was no disclosure of fees included with the substitution, and no  
4 application for appointment of counsel.

5 SDG-Left Field, a creditor secured by the sole asset<sup>2</sup> of the  
6 estate, filed a motion for relief from the automatic stay on March 17,  
7 2008 ("Left Field Motion"). The balance of schedules and the Rule  
8 2016(b) disclosure of compensation to attorney were due on March 19,  
9 2008. Mr. Nelson eventually submitted the balance of schedules on  
10 April 1, 2008. The § 341(a) meeting of creditors was scheduled for  
11 April 8, 2008.

12 The preliminary hearing on the Left Field Motion was held on  
13 April 16, 2008. The Debtor's opposition rested on a claim of  
14 significant equity in the property, and the understanding that  
15 replacement financing was imminent. During the preliminary hearing,  
16 the Court inquired about the status of Mr. Nelson's appointment as  
17 counsel for the Debtor. The hearing on the Left Field Motion was  
18 continued to May 1, 2008. At the May 1 hearing, Mr. Nelson  
19 represented to the Court that the Debtor expected to file a motion to  
20 approve the anticipated financing within ten days, and that Mr. Nelson  
21 had not yet submitted an application for appointment as counsel due  
22 to illness.

23 On May 23, 2008, Mr. Nelson submitted an application for  
24 appointment as counsel for the Debtor ("Application"). The  
25 declaration he submitted with the Application proclaimed that he "[is]  
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27 <sup>2</sup> The sole asset was a block of real property in downtown San Diego valued at \$26,500,000 in  
28 the Left Field Motion and at \$ 65,525,000 in Debtor's Schedule A. Left Field stated its claim was  
\$18,600,000 as of the petition date.

1 well qualified to represent the Debtor generally in this matter . .  
2 . [does] not hold any interests adverse to the above-entitled estate  
3 and I am a disinterested person as that term is defined in 11 U.S.C.  
4 § 101(14)." The declaration continued to disclose that Mr. Nelson  
5 "received a pre-petition retainer of \$2,500 from the Debtor. That  
6 amount was billed to the Debtor for pre-petition services and applied  
7 to the bill." No information was provided to explain why Hanno T.  
8 Powell had filed the petition as attorney for the Debtor. In  
9 addition, the declaration lacks any disclosure of any connections Mr.  
10 Nelson had to the debtor, creditors, any other party in interest, or  
11 their respective professionals, as required by Bankruptcy Rule  
12 2014(a).

13 On May 27, 2008, at the third hearing on the Left Field Motion,  
14 Mr. Nelson presented a Motion to Incur Post-Petition Secured Debt and  
15 for Conditional Dismissal of Chapter 11 Proceeding. According to the  
16 proof of service and caption, Mr. Nelson had already obtained a  
17 hearing date of July 3, 2008, and sent notice of that hearing to  
18 interested parties. During the May 27 hearing, the hearing date on  
19 the motion to incur financing was advanced to June 25, 2008, and the  
20 Left Field Motion was continued to the same date and time. On June  
21 25, the hearings were continued to 2:00 p.m. on July 16, 2008, to  
22 provide more time for the details of the financing to be worked out.

23 On July 16, at 10:46 a.m., Mr. Nelson filed an Amended Motion to  
24 Incur Post-Petition Secured Debt and for Dismissal. At the hearing  
25 that afternoon, Mr. Nelson represented that the Debtor now had a loan  
26 for \$35 million, and that the Debtor had been "in dialogue" with  
27 junior lienholders to obtain subordination agreements. Mr. Nelson  
28 claimed that with a final number for financing, he could at last

1 successfully negotiate with creditors or propose a confirmable plan  
2 of reorganization. Mr. Nelson assured the Court that by July 24,  
3 2008, the Debtor would either file a plan or begin making adequate  
4 protection payments to Left Field. Based on these representations,  
5 the Court continued the hearing to the next available date of August  
6 4, 2008, with the condition that if the Debtor did not file a plan of  
7 reorganization or begin making payments to Left Field by July 25, then  
8 Left Field would be entitled to relief from the automatic stay.

9 During the hearing, Mr. Nelson was reminded that the Debtor had  
10 not submitted a single monthly operating report required under  
11 Bankruptcy Rule 2015 during the four months the case had been pending.  
12 He filed the operating reports for March 2008, April 2008 and May 2008  
13 on July 23, 2008. Late in the day on July 25, 2008, Mr. Nelson filed  
14 a plan of reorganization, along with a notice setting the hearing on  
15 confirmation for September 25, 2008. The plan was not accompanied by  
16 a disclosure statement, and there was no notice of any hearing  
17 scheduled for a disclosure statement. Section 1125(b) prohibits the  
18 solicitation of an acceptance or rejection of a plan unless the  
19 solicitation is accompanied by a disclosure statement that has been  
20 approved by the court as containing adequate information, after notice  
21 and a hearing.

22 On August 4, 2008, the Court conducted another hearing on the  
23 relief from stay and financing. Mr. Nelson explained that the Debtor  
24 expected the loan to fund by August 29, and then the case would be  
25 dismissed. They would only proceed with a plan if they could not  
26 reach an agreement with the junior lenders. The financing order was  
27 informally approved to allow the funding process to begin. Mr. Nelson  
28 was to prepare precise escrow instructions, determine amounts to be

1 paid to junior lienholders and submit a proposed order. The hearing  
2 was continued to August 13, 2008. At the August 13 hearing, Mr.  
3 Nelson reported that the parties were closer, but they still did not  
4 have an agreement for subordination from the second priority  
5 lienholder. He expected to have a stipulated order signed by August  
6 18, 2008. If the loan did not fund by August 29, Left Field was to  
7 have relief from the automatic stay unless the Debtor made a showing  
8 of good cause for a further extension of the stay.

9 The loan did not fund by August 29. An emergency motion to  
10 extend the automatic stay was heard on September 2, 2008. Mr. Nelson  
11 explained it was taking longer than expected to close the loan, so the  
12 hearing was continued to September 5. Left Field was granted  
13 immediate relief from the stay, but if an adequate protection payment  
14 was made by September 8, the foreclosure sale could not occur until  
15 October 6. This provided the Debtor with an additional month to  
16 secure funding. The financing never materialized, and Left Field  
17 acquired the property through foreclosure.

18 After that, the case languished. The Debtor did not pursue  
19 confirmation of the plan, did not file operating reports and did not  
20 seek to dismiss or convert the case. Eventually, the United States  
21 Trustee filed a motion to convert or dismiss the Chapter 11 for cause  
22 as evidenced by the failure to file operating reports, pay quarterly  
23 fees due under 28 U.S.C. § 1930(a)(6), or to pursue any form or  
24 reorganization or exit strategy. Mr. Nelson filed a limited objection  
25 on behalf of the Debtor, to state a preference for dismissal over  
26 conversion to Chapter 7.

27 On June 10, 2009, the date of the hearing on the motion to  
28 convert or dismiss, Mr. Nelson filed the operating reports for June

1 2008 through May 2009, to obtain dismissal rather than conversion to  
2 Chapter 7. At the June 10 hearing, the case was dismissed with  
3 conditions. Mr. Nelson was to submit a declaration concerning the  
4 fees he received, and the Court retained jurisdiction over the case  
5 for sixty days to hear and resolve any issues concerning the funds  
6 received by Mr. Nelson in connection with the case.

7 On July 2, 2009, Mr. Nelson filed a document in which he  
8 declared:

9 1. I am an attorney admitted to practice in the State  
10 of California and before this Court.

11 2. As indicated in the Declaration I filed on May 23,  
12 2008, support (sic) of the Debtor's Application to Employ  
13 General Counsel, I received a pre-petition retainer of  
14 \$2,500.00 from the Debtor. That amount was billed to the  
15 Debtor for pre-petition service and applied to that bill.  
16 A true and accurate copy of my Declaration, which is item  
17 59 on the Court's Docket in this matter, is attached hereto  
18 for the Court's convenience.

19 3. I have not submitted any invoices or bills to the  
20 Debtor since I became Debtor's Counsel in this matter. The  
21 Debtor sent a check in the amount of \$2,000.00 to me in  
22 October 2008. I returned the check because no payment to  
23 me had been given by the Court (sic), nor had I submitted  
24 an application to the Court for approval of interim fees.

25 4. The \$2,500.00 I received prior to the filing,  
26 which was disclosed to the Court in my Declaration, is the  
27 only compensation I have received from the Debtor.

28 Although the Declaration technically complied with the language  
of the order of dismissal, it did not contain the full disclosure  
required by § 329 and Rules 2016 and 2017. An attorney is required  
to disclose compensation received in connection with a case, directly  
or indirectly, from any source, and to disclose the source. In re  
Park-Helena Corp., 63 F.3d 877, 880-881 (9<sup>th</sup> Cir. 1995). The language  
in the order of dismissal presented by the parties, and the  
Declaration limiting the disclosure to fees received from the Debtor,  
is not sufficient to allow the Court to consider issues regarding any  
compensation received by Mr. Nelson in connection with the case.

1 Counsel for a debtor in possession must be disinterested and has  
2 an ongoing duty to disclose any connections with the debtor, creditors  
3 and any other party in interest. §§ 327(a), 328(c). In reviewing  
4 this matter, the Court notes that on the captions of some pleadings,  
5 Mr. Nelson used the address of 9089 Clairemont Mesa Blvd., Suite 100,  
6 San Diego 92123. The Court also notes that this is remarkably close  
7 to the address of World Wide Money Center, located at 9089 Clairemont  
8 Mesa Blvd., Suite 200, San Diego 92123. This is significant in this  
9 case, and requires further explanation by Mr. Nelson, because World  
10 Wide Money Center is listed as the recipient of notice for the  
11 majority of creditors in Case No. 08-01200-LT11, filed by a Debtor  
12 called Ash & State, LLC. A notice of related case was filed in both  
13 the Simplon case and the Ash & State case to indicate that the cases  
14 were related. Each Debtor filed pleadings in support of positions  
15 taken by the other Debtor. Given the overlapping interests in the two  
16 cases and related addresses of Mr. Nelson and most of the secured  
17 claims listed in the Ash & State petition, this Court requires a full  
18 disclosure by Mr. Nelson of any connection he may have to World Wide  
19 Money Market, as well as any other party who may have an interest in  
20 this case.

21 IT IS ORDERED that:

22 On or before October 16, 2009, Thomas C. Nelson shall file with  
23 this Court a supplemental declaration addressing the Court's concerns  
24 recited herein. Specifically, the supplemental declaration should  
25 include:

26 1) All information about any compensation received in connection  
27 with a case, directly or indirectly, from any source, and to disclose  
28 the source;

1           2) Any connections between Mr. Nelson and World Wide Money  
2 Market; and

3           3) Any additional information to provide complete disclosure of  
4 the information required by §§ 327, 328 and 329 and Rules 2014, 2016  
5 and 2017.

6           A copy of the supplemental declaration shall be served on the  
7 United States Trustee. The Court shall continue to retain  
8 jurisdiction over this matter pending satisfactory disclosure by Mr.  
9 Nelson and resolution of any issues related thereto.

10 Dated: **SEP 30 2009**

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13 JAMES W. MEYERS, Judge  
14 United States Bankruptcy Court  
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